IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 1848 of 2006()

AGAINST THE ORDER IN CMP.4924/2005 IN
STC.586/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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PETITIONER: ACCUSED

VANIYAKANDI LAKSHMANAN,
S/O.ANANDAN, DEEPALAYAM,
LENIN ROAD, P.O.KOLANCHERRY,
KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS: COMPLAINANT
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1. R.VASUDEVAN, S/O.RAGHAVAN NAIR,
NEAR CANAL PALAM, VALIYANUR,
P.O.VARAM, KANNUR DISTRICT.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.SUNIL V.MOHAMMED
R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1848 of 2006

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Dated this the 19th day of February, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The cheque is for an amount of Rs. 5 Lakhs. It is contended that the petitioner/accused and the respondent/ complainant are landlord and tenant. The accused had raised a contention even in the reply to the notice of demand that the liability had been discharged and the complainant had issued a voucher. The contention was that the amount had been paid on receipt of the notice of demand under a voucher. The accused stuck to that contention throughout the trial. He filed an application to forward the cheque to an expert for examination. The learned Magistrate sent the cheque to a private expert. Her report has been secured. The report is against the petitioner.

2. When the adverse report was received, the petitioner filed another application to send the said cheque to another expert for opinion. He further prayed that some other admitted contemporaneous signatures may also be forwarded to the expert for

opinion. The learned Magistrate, by the impugned order, rejected the said prayer and dismissed the application. The petitioner claims to be aggrieved by that order, a copy of which is produced as Annex.A6.

3. The impugned order is an interlocutory order. The law frowns upon attempts to challenge interlocutory orders during the pendency of the trial. The disapproval of the law against such attempt to challenge interim orders is very evident from the provisions of Section 397(2) Cr.P.C. Normally a person aggrieved by an interlocutory order passed by the Court will certainly have to wait till the proceedings are over and must wait to challenge that order along with the final order that is to be passed in the proceedings.

4. The powers under Section 482 Cr.P.C. are sweeping. The fetter under Section 397(2) Cr.P.C. does not take away the jurisdiction of the court to invoke the powers in an appropriate case under Section 482 Cr.P.C. But the crucial satisfaction must be entertained by the Court - that there has been failure/miscarriage of justice resulting from the impugned order.

5. I am unable to entertain that satisfaction now on the basis of the materials available. The petitioner had applied to forward the cheque to an

expert. The court had forwarded the cheque to the expert. Though the petitioner contends that the petitioner had not chosen the expert and it was the court which decided the expert, to whom the document must be sent for comparison, it is evident that the petitioner had not raised any objection when the court did send the document to the expert in question. The petitioner did not also at that stage insist that more specimen/standard writings must be sent to the expert to compare the disputed signature with admitted/specimen signature.

6. At this stage of the proceedings, I do not find any merit in the objections raised by the petitioner. The petitioner can certainly call the expert for cross examination. In an appropriate case, if he succeeds in the course of cross examination to challenge the opinion of the expert, it may be possible for the petitioner to renew the request to forward the document to another/better expert. At any rate, I am not satisfied that this is a fit case where the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. can or deserves to be invoked.

7. This Crl.M.C. is accordingly dismissed, but subject to the above observations. I make it clear that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to challenge the impugned order,

if necessary, along with the final order to be passed by the learned Magistrate in the prosecution. I make it clear that I have only intended to say that I do not find any satisfactory reason to invoke the powers under Section 482 Cr.P.C. at this stage.

(R. BASANT)
Judge

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